

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

MATTHEW WITNAUER,

Defendant.

REPORT AND RECOMMENDATION

09-CR-224(S)



By Order of Hon. William M. Skretny dated June 24, 2009, the above case was referred to me, with the consent of the defendant, to take the defendant's plea of guilty and to conduct an allocution pursuant to Rule 11 of the Federal Rules of Criminal Procedure for a Report and Recommendation. The following is my Report and Recommendation as to the defendant's plea of guilty.

On June 24, 2009, the defendant entered a plea of guilty in this case, as set forth in the transcript of the plea proceeding, which will be transmitted with this written Report and Recommendation. In accordance with my oral Report and Recommendation at the close of the plea proceeding, it is my Report and Recommendation that the defendant's plea of guilty accords with the requirements of Fed. R. Crim. P. 11 and that your Honor adjudge the defendant guilty of the offense(s) to which the guilty plea was offered.

The time from June 24, 2009 until Judge Skretny rules on this Report and Recommendation is excluded from the Speedy Trial Act calendar pursuant to 18 U.S.C. §§3161(h)(1) and 3161(h)(1)(H).

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of this Court within ten (10) days after receipt of a copy of this Report and

Recommendation in accordance with the above statute, Fed. R. Crim. P. ("Rule") 58(g)(2) and Local Rule of Criminal Procedure 58.2.

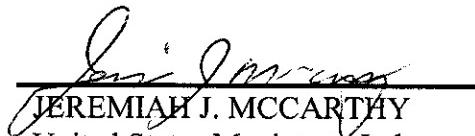
The district judge will ordinarily refuse to consider *de novo* arguments, case law and/or evidentiary material which could have been, but was not presented to the magistrate judge in the first instance. See, e.g., Patterson-Leitch Co. v. Massachusetts Mun. Wholesale Electric Co., 840 F. 2d 985 (1st Cir. 1988).

Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order. Thomas v. Arn, 474 U.S. 140 (1985); Wesolek v. Canadair Ltd., 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 58.2 of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." Failure to comply with the provisions of Local Rule 58.2, or with the similar provisions of Local Rule 58.2 (concerning objections to a Magistrate Judge's Report and Recommendation), may result in the District Judge's refusal to consider the objection.

SO ORDERED.

Dated: June 24, 2009



JEREMIAH J. McCARTHY
United States Magistrate Judge